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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RUFUS BOHNIE LEVELS, JR.

Defendant and Appellant.

F072311

(Fresno Super. Ct. No. F06904307)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Kent W. Hamlin, Judge.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J., and McCabe, J.

Appointed counsel for defendant Rufus Bohnie Levels, Jr., asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. He responded with a letter, raising several issues regarding jury composition, jury instructions, insufficient evidence, drug programs, and ineffective assistance of counsel regarding his 2006 and 2007 convictions.

Defendant already appealed following his 2006 trial and we responded to those issues in a nonpublished opinion. (*People v. Levels* (June 23, 2008, F052369) [nonpub. opn.].)¹ Issues he did not raise at that time are no longer appealable. (See Cal. Rules of Ct., rule 8.308(a) [notice of appeal must be filed within 60 days after the judgment is entered]; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1427 [defendant forfeited his challenge to an order by failing to seek a timely appeal from that order].)

We do consider, however, defendant's requests to reduce two of his felonies to misdemeanors pursuant to Proposition 47. (Pen. Code, § 1170.18).² We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On September 26, 2006, in case No. F06904307-6, defendant was convicted by jury trial of various crimes including intentional infliction of corporal injury on the mother of his child (§ 273.5, subd. (e)).

On February 27, 2015, acting in propria persona, defendant filed a request that the trial court reduce the felony conviction for intentional infliction of corporal injury

¹ We take judicial notice of both the appellate record and our nonpublished opinion in case No. F052369.

² All statutory references are to the Penal Code.

(§ 273.5, subd. (e)) in case No. F06904307-6 to a misdemeanor pursuant to Proposition 47.

On August 12, 2015, defendant prepared a motion under Proposition 47, arguing that his 1996 conviction for second degree robbery (§ 211) in case No. 557725-9 should be reduced to a misdemeanor because the value of the items taken did not exceed \$950. He also requested that the prior strike allegation based on the robbery conviction be stricken and the sentence in case No. F06904307-6 be modified. This motion does not bear a file stamp.

On August 18, 2015, the trial court denied defendant relief under Proposition 47. The order does not contain any details, but is simply a form on which the court checked the box stating that defendant was ineligible for relief because his conviction(s) did not qualify under section 1170.18.

DISCUSSION

On November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Id.* at p. 1091.)

“Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor ... unless the court, in its discretion, determines that resentencing the

petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).) Subdivision (c) of section 1170.18 defines the term ‘unreasonable risk of danger to public safety,’ and subdivision (b) of the statute lists factors the court must consider in determining ‘whether a new sentence would result in an unreasonable risk of danger to public safety.’ (§ 1170.18, subds. (b), (c).)” (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.) “Section 1170.18 also provides that persons who have completed felony sentences for offenses that would now be misdemeanors under Proposition 47 may file an application with the trial court to have their felony convictions ‘designated as misdemeanors.’ (§ 1170.18, subd. (f); see *id.*, subds. (g)-(h).)” (*Id.* at p. 1093.)

Although we cannot be sure the trial court considered the August 12, 2015 motion, the outcome remains the same because neither intentional infliction of corporal injury (§ 273.5, subd. (e)) nor second degree robbery (§ 211) are among the offenses listed in section 1170.18. Thus, defendant is not eligible for relief under Proposition 47, and the trial court properly denied his petition for resentencing.

We see no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The order denying defendant’s petition for resentencing pursuant to Proposition 47 is affirmed.

We take judicial notice of both the appellate record and our nonpublished opinion in case No. F052369.